

MISSISSIPPI SUPREME COURT DECISIONS – MARCH 21, 2024***SUPREME COURT - CIVIL CASES*****IN RE: DEATH INVESTIGATION OF CHRISTIAN ANDREACCHIO****CIVIL - OTHER**

CIVIL PROCEDURE - JURISDICTION - STANDING - To establish standing, the petitioner must show it has a legal interest or right to judicial enforcement of a legal duty

CIVIL PROCEDURE - VICTIMS' RIGHTS BILL - STANDING - Victims under the Miss. Crime Victims' Bill of Rights are entitled to have questions answered and information provided by the district attorney prosecuting the case

FACTS

Following the death of Christian Andreacchio, the Andreacchio Estate petitioned the Lauderdale County Circuit Court to appoint an attorney to act as district attorney pro tempore to prosecute those they believed were responsible for his death. The circuit court denied the petition in part because the court determined the Andreacchio Estate did not have standing. The Andreacchio Estate appealed.

ISSUES

Whether (1) The Andreacchio Estate has standing to force the circuit court to appoint a district attorney to pursue criminal charges and (2) Mississippi statutory law and common law permits private citizens to direct the State's prosecutorial powers.

HOLDING

(1) Because there was no ongoing proceeding via which the rights conveyed in the Miss. Crimes Victims' Bill could attach to the Estate, the Estate lacked standing. (2) Because every indication from Mississippi's prosecutorial structure and caselaw showed that allowing private direction of prosecutions, which must be brought on behalf of the State, was disallowed, the Estate could not direct the State's prosecutorial powers. Therefore, the Supreme Court affirmed the judgment of the Lauderdale County Circuit Court.

Affirmed - 2023-CA-00060-SCT (Mar. 21, 2024)

Opinion by Justice Coleman

Hon. Charles W. Wright Jr. (Lauderdale County Circuit Court)

Cynthia Hewes Speetjens for Appellant

Briefed by [Jarius Colley](#)

Edited by [Kennedy Gerard](#) & [William Davis](#)

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LINDSEY V. BUTTS**CIVIL - WRONGFUL DEATH**

CIVIL PROCEDURE - SERVICE OF PROCESS - ADDITIONAL REQUIREMENTS - Under Miss. R. Civ. P. 4(d)(1)(A)-(B), mailing an additional copy of the complaint and summons to the named defendant is required if service cannot be made under subparagraph (1)(A)

CIVIL PROCEDURE - SERVICE OF PROCESS - 120-DAY RULE - Miss. R. Civ. P. 4(h) requires a plaintiff to serve the summons and complaint on a defendant within 120 days of filing a complaint; otherwise the judge must dismiss the action without prejudice

PLEADINGS - SUMMARY JUDGMENT - FILING - Under Miss. R. Civ. P. 56(b), a defendant is permitted to file a motion for summary judgment “at any time”

TORTS - MEDICAL MALPRACTICE - EXPERT TESTIMONY - When a plaintiff fails to provide expert testimony establishing a prima facie case of medical malpractice, a grant of summary judgment is required

FACTS

In February 2021, Beverly Butts sued Greenwood Leflore Hospital (“the Hospital”) and Reese Lindsey on behalf of the beneficiaries of John Albert Hemphill Sr. for Hemphill’s wrongful death. The suit alleged that Lindsey treated Hemphill for a urinary-tract infection at the Hospital and that Lindsey discharged Hemphill with a cut-off catheter still attached to and retracted in his bladder. According to the complaint, Hemphill did not discover the catheter until four years later and subsequent to his discharge suffered continued urinary-tract infections and septic shock, which ultimately lead to Hemphill’s death. After the complaint was filed and summons issued in May of 2021, Butts’s counsel attempted to personally serve Lindsey at the same address as the Hospital. When Lindsey could not be found at that address, a second “alias” summons was issued. This summons was left with Lindsey’s mother at her address in Bolivar County. Butts did not mail an additional copy of the complaint and summons to Lindsey at his mother’s address. With no answer from Lindsey, a “Preliminary Entry of Default” was entered against Lindsey in January 2022. Later than month, Lindsey moved to vacate and set aside the “Preliminary Entry of Default” for lack of process. In February 2022, without court approval, a third summons was issued to Lindsey’s Ocean Springs address. In March 2022, Lindsey moved to strike and dismiss the third summons and complaint. The trial court granted the motion to vacate and set aside the “Preliminary Entry of Default,” denied the motion to strike and dismiss the third summons and complaint and found that attempted service on Lindsey was not effectuated through his mother. During interrogatories in July 2021, the Hospital asked for the names of Butts’s expert witnesses. Butts could not provide any identifiable expert witnesses. The Hospital moved for summary judgment in April 2022 and argued that Butts could not prove a medical-negligence claim because she lacked a medical expert. The trial court denied the Hospital’s motion for summary judgment. Lindsey and the Hospital appealed.

ISSUES

Whether the trial court erred by denying (1) Lindsey’s motion to strike the summons and dismiss the complaint and (2) the Hospital’s motion for summary judgment.

HOLDING

(1) Because Butts never legally served process upon Lindsey, the trial court lacked jurisdiction over him. (2) Because Butts failed to identify a medical expert that would testify regarding the applicable standard of care and alleged breach by the Hospital employees, summary judgment was required in Butts’s medical-negligence action. Therefore, the Supreme Court reversed and rendered the judgment of the Leflore County Circuit Court.

CONCURRENCE IN PART & DISSENT IN PART

Justice Maxwell agreed that the Hospital was entitled to summary judgment because Butts failed in her burden to produce medical expert testimony to support her medical negligence claim. Justice Maxwell also agreed that Butts failed to timely serve Lindsey. He disagreed with the decision to render on the issue of Butts’s service on Lindsey. He argued that several fact questions existed on the good-cause issue of service such that the issue should be remanded to the trial court.

Reversed & Rendered - 2022-IA-00738-SCT (Mar. 21, 2024)

En Banc Opinion by Chief Justice Randolph - Concurrence in Part & Dissent in Part by Justice Maxwell
Hon. Margaret Carey-McCray (Leflore County Circuit Court)
Robert J. Dambrino III for Appellant - Marvin L. Sanders for Appellee

Consolidated with:

Reversed & Rendered - 2022-IA-00882-SCT (Mar. 21, 2024)

Hon. Margaret Carey-McCray (Leflore County Circuit Court)

Harris F. Powers III & Tommie G. Williams Jr. for Appellant - Marvin L. Sanders for Appellee

Briefed by [Dane D. Norvell II](#)

Edited by [Kayla Tran](#) & [William Davis](#)

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TOMMY BROOKS OIL CO. V. WILBURN

CIVIL - CONTRACT

CIVIL PROCEDURE - CONTRACT - PRIMA FACIE CASE - A prima facie case is made on an open-account case based upon proof offered by the creditor; once the creditor offers a prima facie case, the burden shifts to the debtor to prove that the claim is incorrect

CIVIL PROCEDURE - CONTRACT - OPEN ACCOUNT - In order to state a case under an open account, a plaintiff must show (1) actual ledger cards or entries showing each debit and credit on the defendant's account; (2) through testimony of its manager or representative, the simultaneous business machine posting and invoice billing to the customer; (3) the correctness and accuracy of the entries; and (4) that all materials represented by the entries had been delivered to defendant

FACTS

Tommy Brooks Oil Co. ("Brooks Oil") supplied Wilburn Oil Co., Inc. ("Wilburn Oil") with fuel products for Wilburn Oil's gas stations. In 2013, Brooks Oil claimed that Wilburn Oil owed close to \$1 million in unpaid bills. In order for Brooks Oil to resume selling Wilburn Oil fuel products, Jerry Wilburn signed two personal guaranties. The guaranties provided that Wilburn guaranteed to Brooks Oil that he would be personally liable for Wilburn Oil's debt "due or to become due... now existing or hereafter arising..." In 2014, Brooks Oil sued Wilburn individually, claiming that Wilburn Oil was not paying the outstanding invoices, and attempted to collect from Wilburn personally. Wilburn moved for summary judgment, claiming that neither party had intended for the guaranties to apply to past debt and that there was either a mutual mistake or a unilateral mistake. The trial court granted Wilburn's motion for summary judgment and dismissed Brooks Oil's suit against Wilburn in the guaranties suit. On appeal, the Supreme Court found that genuine issues of material fact existed on what debt the parties intended the guaranties to cover and whether there was a mutual mistake as asserted by Jerry Wilburn. The Court remanded the case and the new trial began in 2022, with Jerry Wilburn asserting that invoices had always been paid to Brooks Oil. The trial court entered two separate judgments in favor of Wilburn and Wilburn Oil and denied Brooks Oil's JNOV motion. Brooks Oil appealed and Wilburn Oil cross-appealed, claiming the trial court erred by denying its motion for costs and attorneys' fees under Miss. Code Ann. § 11-53-81.

ISSUES

Whether the trial court erred by (1) holding that Brooks Oil was not able to establish a prima facie case of open-account debt owed to it by Wilburn Oil and (2) denying Brooks Oil's motion for a JNOV.

HOLDING

(1) Because the records provided demonstrated the invoices were correct, the trial court erred by holding that Brooks Oil was not able to establish a prima facie case of open-account debt owed to it by Wilburn Oil. (2) Because Brooks Oil's evidence at trial made out a prima facie case of open-account debt owed to it by Wilburn Oil, and because Wilburn Oil failed to prove that it did not owe any debt to Brooks Oil, the trial court erred in denying Brooks Oil's motion for a JNOV. Therefore, the Supreme Court reversed and remanded the judgment of the Lee County Circuit Court.

On Direct Appeal: Reversed & Remanded. On Cross-Appeal: Affirmed - 2022-CA-00551-SCT (Mar. 21, 2024)

Opinion by Justice Beam

Hon. John R. White (Lee County Circuit Court)

Walter D. Willson & Kevin Alan Rogers for Appellant - Michael D. Greer, William C. Spencer, & William C. Spencer Jr. for Appellee
Briefed by [Madeline Crane](#)
Edited by [Doug Reynolds](#) & [Emily Phillips](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – MARCH 19, 2024

COURT OF APPEALS - CIVIL CASES

GRAY V. JOHNSON

CIVIL - WILLS, TRUSTS, & ESTATES

CONTRACT INTERPRETATION - LATENT AMBIGUITY - PAROLE EVIDENCE - A latent ambiguity arises from words which are uncertain when applied to the subject matter of a contract; if a contract is ambiguous due to a latent ambiguity, relevant parol or extrinsic evidence may be used to resolve a latent ambiguity

WILLS & ESTATES - PAY-ON-DEATH BENEFICIARY STATUTE - NAME - For purposes of the pay-on-death beneficiary statute, Miss. Code Ann. § 81-5-62(a), a person's name consists of one or more Christian or given names and one surname or family name; it is a distinctive characterization in words by which one is known and distinguished from others, and description, or abbreviation, is not the equivalent of a "name"

FACTS

Donald Davis had two daughters, Melissa Johnson (formerly Melissa Ann Bailey) ("Melissa") and Cnealexis Gray. Davis died in August 2020. Prior to his death, he opened an account in the form of a certificate of deposit ("CD") with United Mississippi Bank ("UMB") in January 2019. On the Additional Terms and Disclosures page attached to the CD, in the section where the owner designates the pay-on-death beneficiary by listing the beneficiary's name and address, Davis designated the pay-on-death beneficiary as "Melissa Ann Bailey," provided Gray's social security number, and then provided Melissa's date of birth. On the Account Agreement page attached to the CD, in the section labeled "Beneficiary Designation," the option "Pay-On-Death (POD)" was selected, and in response to the box labeled "Beneficiary Name(s), Address(es) and SSN(s)," Davis listed "Melissa Ann Bailey," provided Gray's social security number, and provided Melissa's date of birth. The terms of the CD stated that if multiple beneficiaries are listed, then the funds of the account will be split equally between all listed beneficiaries. When Davis died there was \$127,000 in the CD. Following Davis's death, Melissa opened Davis' estate and was appointed administratrix. The court entered an order naming Melissa as Davis's sole heir at law. UMB noticed that Melissa's name was listed but that Gray's social security number was also listed. Following a petition to the chancery court, the court dismissed UMB as a party and ordered Gray and Melissa to assert any claims to the funds of the account. Gray filed a claim requesting the full \$127,000 be disbursed to her and alleged that she had a witness who could attest to the fact that Davis intended to leave the CD to her. Gray never presented any affidavits or witness testimony in support of her claim. Melissa filed a motion for summary judgment and argued that she was the sole named beneficiary under the pay-on-death provision of the CD. Melissa also presented an affidavit from herself alleging that Davis had informed her during his lifetime that he had purchased several CDs and listed Melissa as the pay-on-death beneficiary. The court denied the motion for summary judgment and found that a genuine issue of material fact of Davis's intent existed because the form allowed for multiple beneficiaries to be designated and Davis may have intended multiple beneficiaries because he included Gray's social security number. At a hearing on the question of who Davis intended to designate as his beneficiary or beneficiaries, Melissa presented evidence from the bank employee who entered Davis's form into a computer. The employee confirmed each entry with Davis and testified that Davis designated Melissa on other CDs. Gray testified that no other CDs were left in her name and argued that Davis had intended to designate Gray as his beneficiary because her social security number would not have otherwise been listed. In its final judgment, the chancery court found that Davis intended to designate Melissa as the sole pay-on-death beneficiary. Gray appealed.

ISSUE

Whether the chancery court erred in finding that Davis intended Melissa to be the sole pay-on-death beneficiary.

HOLDING

Because credible extrinsic evidence supported the conclusion that Davis intended to designate only Melissa Johnson as his pay-on-death beneficiary, the chancery court did not abuse its discretion, and its decision was neither manifestly wrong nor clearly erroneous. Therefore, the Court of Appeals affirmed the judgment of the Adams County Chancery Court.

Affirmed - 2023-CA-00339-COA (Mar. 19, 2024)

Opinion by Judge McDonald

Hon. E. Vincent Davis (Adams County Chancery Court)

T. Jackson Lyons for Appellant - Lisa Jordan Dale for Appellee

Briefed by [Isabella Escobedo](#)

Edited by [Kennedy Gerard](#) & [William Davis](#)

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JACKSON CNTY. V. MARECELLUS

CIVIL - STATE BOARDS & AGENCIES

CIVIL PROCEDURE - REZONING - APPLICATION REQUIREMENTS - When a resident is seeking a zoning reclassification, the application must show by clear and convincing evidence that (1) there was either a mistake in the original zoning or that the character of the neighborhood has changed to such an extent as to justify rezoning and (2) a public need exists for rezoning

CIVIL PROCEDURE - REZONING - DETERMINATION OF EXISTENCE OF PUBLIC NEED - Substantial weight may be given to the concerns of the citizenry in determining whether a public need exists for rezoning

FACTS

Michael Marcellus owned property zoned as residential. He applied to rezone the area to commercial. The Jackson County Planning Department ("JCPD") recommended that the Board approve the rezoning classification. Residents in the area appealed the decision to the Jackson County Board of Supervisors ("the Board"). The Board held a hearing and heard testimony from several residents. Neighbors testified about their concerns for the safety of their children and the potential increase in traffic. Neighbors also testified against there being a need for rezoning, stating that reclassifying the property as commercial would bring down the value of the neighborhood. The neighbors further testified that the property should remain residential because houses were being built in the vacant lots and Marcellus' property was the only entryway and exit for the apartment complex. Donavon Scruggs, a town planning consultant, testified on Marcellus' behalf. Scruggs testified that recent developments in the neighborhood changed the character of the neighborhood from residential to commercial. Scruggs also explained that the property will only contain small office-like businesses. The Board denied the rezoning request. Marcellus appealed to the Jackson County Circuit Court, and the court held the Board's decision was arbitrary and capricious. The Board appealed.

ISSUE

Whether the Board's decision was arbitrary and capricious such that the circuit court erred by reversing the Board's denial of Marcellus' rezoning application.

HOLDING

Because Marcellus could not demonstrate a public need to the Board, the Board's decision was not arbitrary and capricious. Therefore, the Court of Appeals reversed and rendered the judgment of the Jackson County Circuit Court.

Reversed & Rendered - 2023-CA-00111-COA (Mar. 19, 2024)

Opinion by Judge Westbrook

Hon. Dale Harkey (Jackson County Circuit Court)

James H. Colmer Jr. for Appellant - Michael E. Whitehead & Johana Malbrough McMullan for Appellee
Briefed by [Zylan Coleman](#)
Edited by [Kayla Tran](#) & [Emily Phillips](#)

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ROGERS V. NEWSOUTH NEUROSPINE LLC

CIVIL - MEDICAL MALPRACTICE

CIVIL PROCEDURE - PLEADINGS - MOTIONS TO AMEND OR ALTER - Motions to amend or alter judgments shall be filed not later than ten days after entry of the judgment

CIVIL PROCEDURE - MOTIONS FOR RELIEF - CLERICAL ERRORS - Clerical mistakes in judgments arising from oversight or omission may be corrected by the court on the motion of any party

CIVIL PROCEDURE - MOTIONS FOR RELIEF - EXCEPTIONAL CIRCUMSTANCES - Relief may be granted for reason of fraud, misrepresentation, misconduct of an adverse party, accident or mistake, or newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial

CIVIL PROCEDURE - SANCTIONS - SEPARATE FILING - The party requesting attorney's fees must file a motion in the court, supported by affidavits and time records that establish the actual fees expended on appeal

FACTS

In 2010, Charles Rogers received treatment at a pain management clinic owned by NewSouth NeuroSpine LLC ("NewSouth"). In 2021, Rogers filed a complaint pro se against NewSouth, its manager, his doctor, and his nurse alleging medical malpractice or medical negligence committed by NewSouth between 2015 and 2016. NewSouth filed a motion to dismiss the claim as untimely. The trial court subsequently dismissed the complaint as time-barred. Rogers did not appeal the judgment. Over a month later, Rogers filed a motion pursuant to Miss. R. Civ. P. 11 alleging various misconduct by NewSouth's attorney. NewSouth responded and filed its own motion for fees and costs. In Rogers's rebuttal response, Rogers raised an alternative motion pursuant to Miss. R. Civ. P. 60(a). The trial court denied Rogers's motions and NewSouth's request for sanctions. Rogers appealed.

ISSUES

Whether the trial court erred by denying (1) Rogers's motion for Miss. R. Civ. P. 11 sanctions; (2) Rogers's Miss. R. Civ. P. 60(a) motion for relief from the judgment; and (3) NewSouth's request for attorney's fees.

HOLDING

(1) Because Rogers failed to raise the motion within ten days of the circuit court's dismissal of the case, the trial court did not err by denying Rogers's motion for Miss. R. Civ. P. 11 sanctions. (2) Because Rogers did not allege any specific clerical errors, and because Rogers failed to show the existence of exceptional circumstances entitling him to a relief from the judgment, the trial court did not err by denying Rogers's Miss. R. Civ. P. 60(a) motion for relief from the judgment. (3) Because NewSouth asked for attorney's fees in its brief and did not file a separate motion as required, the trial court did not err in denying NewSouth's request for attorney's fees. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

Affirmed - 2022-CP-01036-COA (Mar. 19, 2024)

Opinion by Judge Lawrence

Hon. M. Bradley Mills (Rankin County Circuit Court)

Pro se for Appellant - Cecil Maison Heidelberg & Tresa Barksdale Patterson for Appellees

Briefed by [Joshua Arias](#)

Edited by [Doug Reynolds](#) & [Emily Phillips](#)

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WEAVER V. ROSS

CIVIL - TORTS-OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE

CIVIL PROCEDURE - TRIAL - JUDGMENT NOTWITHSTANDING THE VERDICT - An appellate court will affirm the denial of a judgment notwithstanding the verdict motion if there is substantial evidence to support the verdict; substantial evidence is evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions

CIVIL PROCEDURE - TRIAL - MOTION FOR A NEW TRIAL - The jury is the ultimate judge of the weight of the evidence and the credibility of the witness; the jury's verdict will not be set aside unless the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice

TORTS - INTENTIONAL TORTS - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS - To succeed on a claim for intentional infliction of emotional distress, the plaintiff must show: (1) the defendant acted willfully or wantonly toward the plaintiff by committing certain described actions, (2) the defendant's acts are ones that evoke outrage or revulsion in civilized society, (3) the acts were directed at or intended to cause harm to, the plaintiff, (4) the plaintiff suffered severe emotional distress as a direct result of the acts of the defendant, and (5) such resulting emotional distress was foreseeable from the intentional acts of the defendant; the standard for intentional infliction of emotional distress is whether the defendant's behavior is malicious, intentional, willful, wanton, grossly careless, indifferent, or reckless

PROFESSIONAL CONDUCT - ATTORNEY FEES - REASONABLENESS STANDARD - The fixing of reasonable attorney's fees is a matter ordinarily within the sound discretion of the trial court; the court's decision regarding attorney's fees will not be disturbed by an appellate court unless it is manifestly wrong

FACTS

In September 2012, Chris Weaver hired Tim Ross of Ross's Restorations in Crystal Springs to perform restoration work on his 1969 Dodge Dart. About a year later, Ross completed the work and provided Weaver with an invoice for the services. Weaver arrived to pick up the vehicle, inspected it, and was satisfied with the restoration. Against Ross's advice, Weaver transported the vehicle back to Texas on a trailer with inadequate suspension. Once home, Weaver became dissatisfied with the work done on the vehicle and attempted to resolve this dissatisfaction with Ross, but communication broke down. Weaver consulted with other individuals who informed him that the repair was improper. Ross maintained that he did not damage the vehicle and attributed the damage to Weaver's improper transportation of the vehicle back to Texas. In February 2015, Weaver sued Ross for negligent work on his vehicle and claimed negligent infliction of emotional distress. In June 2015, Ross filed an answer and counterclaim against Weaver, alleging tortious interference with business relations, defamation, and intentional infliction of emotional distress. The trial occurred in November 2021 within the Covich County Circuit Court. The trial court denied Ross's July 2021 motion in limine to preclude Weaver from testifying about his increased blood pressure and ruled that while Weaver could testify about his blood pressure, the medical records would not be admitted due to authentication issues. During trial, the court considered whether an invoice from a different company that restored a different vehicle should be admitted into evidence to show a comparison between the jobs' cost and quality. While the owner of the company, John Mosley, testified as an expert witness for Weaver in the field of restoration and repair and the invoice was used in his deposition, the trial court excluded the invoice but allowed testimony on it. Ross had several witnesses testify about the quality of his restorations, the propriety of his billing, and the negative emotional impact of the lawsuit on him. The jury found that Ross was not negligent and that he suffered damages due to Weaver's intentional infliction of emotional distress, awarding Ross "legal fees/court cost." Weaver filed a motion for judgment notwithstanding the verdict ("JNOV") or, in the alternative, a new trial, which the court denied. Ross filed a motion to determine attorney's fees, which was granted. The trial court determined that Weaver should pay Ross \$58,095.66 for attorney's fees as damages. Weaver appealed.

ISSUES

Whether the trial court erred in (1) denying the admission of Weaver's medical records indicating high blood pressure since the incident; (2) denying the admission of an invoice from a different restoration company to show comparative quality and cost; (3) issuing judgment in favor of Ross for a claim of intentional infliction of emotional distress against

the sufficiency and weight of the evidence; and (4) awarding attorney’s fees for damages on the claim was unreasonable and unsupported under Mississippi law.

HOLDING

(1) Because Weaver did not waive the authentication requirement and testified at length about his medical records and the information contained therein, the trial court did not abuse its discretion denying the admission of Weaver’s unauthenticated medical records. (2) Because the invoice did not mention or involve a Dodge Dart but a Ford Truck, which was not necessarily comparable work, and because the trial court allowed Mosely to testify at length about the various restorations and cost compared to Ross’s restoration, the trial court did not abuse its discretion in denying the invoice’s admission and Weaver was not prejudiced by its exclusion. (3) Because substantial evidence existed of intentional emotional distress by Weaver, including testimony of Ross’s nurse practitioner and of negative online comments about Ross’s work, the trial court did not abuse its discretion in denying Weaver’s motion for a new trial. (4) Because the trial court considered the motion to determine attorney’s fees, which included a detailed billing attachment spanning over six years of legal services, as well as testimony from the billing records manager of Weaver’s counsel, the award was supported by substantial, credible evidence. Therefore, the Court of Appeals affirmed the judgment of the Copiah County Circuit Court.

CONCURRENCE

Judge McCarty agreed that the jury’s verdict should be affirmed. He wrote to emphasize that Mississippi law does not allow for emotional distress damages that result solely from the litigation process. He reiterated that the claim for emotional distress was predicated solely on Weaver’s intentional harm caused before the lawsuit, including publishing what Ross contended to be false statements.

CONCURRENCE IN PART & IN RESULT

Presiding Judge Wilson concurred with Parts I and II of the majority opinion and with the Court’s judgment to affirm the trial court. He wrote separately to address two issues. First, he argued that Weaver waived any objection to the improper verdict of “legal fees/court cost.” Presiding Judge Wilson advocated, in the future, for the trial court to instruct the jury to continue deliberation and return a verdict in proper form. Second, he argued that Weaver’s challenge to the trial court’s order granting Ross’s motion to determine attorney’s fees is procedurally barred because Weaver failed to ensure that the transcript of the hearing on the motion was included in the record on appeal.

Affirmed - 2022-CA-00426-COA (Mar. 19, 2024)

Opinion by Chief Judge Barnes - Concurrence by Judge McCarty - Concurrence in Part & in Result by Presiding Judge Wilson
Hon. Tomika Harris Irving (Copiah County Circuit Court)

Philip Carey Hearn & Charles Cassidy Cole for Appellant - James D. Shannon & Heather Lynn Hall for Appellee

Briefed by [Hayward Gordon](#)

Edited by [Nivory Gordon](#) & [William Davis](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

BAIN V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - DIRECT APPEAL - PERMISSION - When a case is affirmed on direct appeal, permission from the Mississippi Supreme Court must be obtained in order to seek post-conviction relief in the circuit court

POST-CONVICTION RELIEF - DIRECT APPEAL - GUILTY PLEA - When a party pleads guilty, the party cannot pursue a direct appeal; therefore, the party does not need permission from the Mississippi Supreme Court to file a post-conviction collateral relief motion

POST-CONVICTION RELIEF - JURISDICTION - CIRCUIT COURT - When a trial court erroneously attributes a party's notice of appeal to a cause number in which the party filed a post-conviction relief motion, the exclusive, original jurisdiction to determine the merits of the party's post-conviction relief petition remains with the trial court; therefore, the trial court should not dismiss the motion on jurisdictional grounds

FACTS

In 2013, Thomas Bain pled guilty to two counts of uttering a forgery in Cause No. 25,343 in the Rankin County Circuit Court. He was adjudicated guilty and sentenced to two concurrent ten-year terms in the Mississippi Department of Corrections ("MDOC"), with four years to serve and six years suspended, conditioned on his good behavior and his completion of five years of post-release supervision ("PRS"). Bain was released and placed on PRS in 2016; however, while on PRS in 2020, he was arrested for possession of methamphetamine and evasion. In September 2021, Bain's field supervisor filed a petition to partially revoke his PRS, and after a revocation hearing, the court granted the petition and remanded him to the custody of MDOC to serve four years of his reinstated sentence. In November 2021, Bain pled guilty to the possession and evasion charges in Cause No. 31,524 in the Rankin County Circuit Court. He was adjudicated guilty and sentenced to serve three years in custody for the possession and five years in custody for the evasion; the sentences were to run concurrently with each other and consecutively to his reinstated sentence. In March 2022, Bain filed a notice of appeal from this judgment; however, in November 2022, the Supreme Court dismissed his appeal for failure to pay costs. Seven days later, Bain filed a motion for post-conviction collateral relief ("PCR") claiming that his PRS was unlawfully revoked because the petition was filed after his PRS period expired. In January 2023, the circuit denied Bain's motion, finding that the court no longer had jurisdiction because he had filed a notice of appeal, and that after the appeal was dismissed, he failed to request leave from the Supreme Court to proceed with his PCR motion. Bain appealed.

ISSUE

Whether the trial court erred by dismissing Bain's PCR motion for lack of jurisdiction.

HOLDING

Because the circuit court erroneously attributed Bain's notice of appeal in Cause No. 31,524 to Cause No. 25,343 in which Bain pled guilty and could not directly appeal, the circuit court should not have dismissed his motion on jurisdictional grounds. Therefore, the Court of Appeals reversed and remanded the judgment of the Rankin County Circuit Court.

Reversed & Remanded - 2023-CP-00206-COA (Mar. 19, 2024)

Opinion by Judge Westbrook

Hon. Dewey Key Arthur (Rankin County Circuit Court)

Pro se for Appellant - Casey Bonner Farmer (Att'y Gen. Office) for Appellee

Briefed by [Ramsey Thrasher](#)

Edited by [Emilee Crocker](#) & [William Davis](#)

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GREEN V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROCEDURAL BAR - SUCCESSIVE MOTIONS - Pursuant to Miss. Code Ann. § 99-39-23(6), any order dismissing the petitioner's motion or otherwise denying relief shall be a bar to a second or successive motion under this article

POST-CONVICTION RELIEF - PROCEDURAL BAR - FUNDAMENTAL RIGHTS EXCEPTION - Mississippi courts cannot apply the judicially-crafted fundamental-rights exception to constitutional, substantive enactments of the legislature for post-conviction relief

POST-CONVICTION RELIEF - MERITS - SPECIFICITY - Claims of ineffective assistance of counsel must be pled with specificity, on motion for post-conviction relief, and the claim must be supported by affidavits other than the defendant's

FACTS

Darrell Green pled guilty in the Warren County Circuit Court to second-degree murder and possession of a firearm by a felon. In March 2021, Green filed his first PCR motion, which the court denied that same month. In November 2022, Green filed a second PCR motion. He asserted ineffective assistance of counsel that resulted in his guilty plea being involuntary. Green did not submit an affidavit to support his claim nor included supporting affidavits from others. The court dismissed Green's second PCR motion as successive and found that Green failed to submit any evidence to substantiate his ineffective assistance of counsel claim. Green appealed.

ISSUE

Whether the trial court erred in dismissing Green's post-conviction relief motion for ineffective assistance of counsel.

HOLDING

Because Green failed to demonstrate any applicable exceptions to the successive-motions bar, the trial court did not err in denying Green's successive motion for post-conviction collateral relief. Therefore, the Court of Appeals affirmed the judgment of the Warren County Circuit Court.

Affirmed - 2023-CP-00448-COA (Mar. 19, 2024)

Opinion by Judge Westbrook

Hon. M. James Chaney Jr. (Warren County Circuit Court)

Pro se for Appellant - Allison Elizabeth Home (Att'y Gen. Office) for Appellee

Briefed by [Robert "Duncan" Jones](#)

Edited by [Kayla Tran](#) & [William Davis](#)

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JORDAN V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROCEDURAL BAR - SUBSEQUENT MOTIONS - Pursuant to Miss. Code Ann. § 99-39-23(6), an order denying a post-conviction collateral relief motion stands as a final judgment and a bar to all subsequent PCR motions unless evidence or an argument supporting a statutory exception is produced

POST-CONVICTION RELIEF - PROCEDURAL BAR - JUDICIAL NOTICE OF ORDERS - Pursuant to *Grogan v. State*, if no proof in the record exists to support or deny the existence of a prior motion for post-conviction relief, the reference in the trial court's order is sufficient to take judicial notice of its existence and to rule that the successive motion was improper

FACTS

Charles Jordan entered a guilty plea to exploitation of a child and was sentenced to twelve years in custody. Jordan filed his first post-conviction collateral relief ("PCR") motion in October 2020. At Jordan's request, the circuit court dismissed the motion with prejudice on November 12, 2020. The circuit court denied Jordan's second PCR motion on November 17, 2020. Jordan filed three more PCR motions in 2021, which the circuit court also denied. In January 2022, Jordan's PCR motions were denied as subsequent filings under Miss. Code Ann. § 99-39-23(6). In April 2022, an order denied five separate motions for relief filed by Jordan as subsequent filings, which listed and cited the January 2022

order and all the prior orders. In August 2022, the circuit court’s order dismissed Jordan’s PCR motion as without merit, but it was procedurally barred despite not being dismissed as a subsequent PCR motion. Jordan appealed.

ISSUE

Whether the circuit court erred in denying Jordan’s post-conviction collateral relief motions as barred subsequent filings.

HOLDING

Because Jordan’s initial November 12, 2020 and November 17, 2020 PCR motions were denied with prejudice, and because the circuit court’s records referenced multiple subsequent PCR motions and orders, and because Jordan had not produced evidence to support an exception to the statutory bar, the circuit court did not err in denying Jordan’s PCR motions as barred subsequent filings. Therefore, the Court of Appeals affirmed the judgment of the Oktibbeha County Circuit Court.

Affirmed - 2022-CP-00874-COA (Mar. 19, 2024)

Opinion by Judge Emfinger

Hon. James T. Kitchens Jr. (Oktibbeha County Circuit Court)

Pro se for Appellant - Ashley Lauren Sulser (Att’y Gen. Office) for Appellee

Consolidated with:

Affirmed - 2022-CP-00877-COA (Mar. 19, 2024)

Hon. James T. Kitchens Jr. (Oktibbeha County Circuit Court)

Pro se for Appellant - Ashley Lauren Sulser (Att’y Gen. Office) for Appellee

Consolidated with:

Affirmed - 2023-CP-00072-COA (Mar. 19, 2024)

Hon. James T. Kitchens Jr. (Oktibbeha County Circuit Court)

Pro se for Appellant - Ashley Lauren Sulser (Att’y Gen. Office) for Appellee

Briefed by [Youssef Kishk](#)

Edited by [Nivory Gordon](#) & [Emily Phillips](#)

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COURT OF APPEALS - CRIMINAL CASES

JONES V. STATE

CRIMINAL - FELONY

CRIMINAL - JURY INSTRUCTION - ENTRAPMENT - An entrapment defense cannot be established if the person was predisposed to commit the offense and the law enforcement officers or other agents merely provided the person with an opportunity to commit the offense; to claim entrapment, a defendant must admit by testimony or other evidence the substantial elements of the offense charged

CIVIL PROCEDURE - TRIAL TRANSCRIPT - PRESUMPTION OF ACCURACY - Pursuant to M.R.A.P 11(c), the court reporter shall certify the transcript as an accurate account of the proceedings and file the original and one copy with the clerk; this action means that the transcript is presumed to be correct

CIVIL PROCEDURE - TRIAL TRANSCRIPT - INACCURACIES - Pursuant to M.R.A.P. 10(e), if there are any disputes over differences, omissions, accidents, or other inaccuracies in the transcript, they must be submitted to and settled by the trial court, and the record must be made to conform to the truth

FACTS

Michael Hansbro, a detective for the Hernando Police Department, used the persona of an underaged girl named Amy when attempting to uncover child exploitation. Corey Jones messaged Amy on a website where she identified herself to

Jones as an underaged fifteen years old girl multiple times. Jones sent explicit messages to Amy asking for nude photos. Jones asked Amy to meet him at a gas station. She agreed, and, when Jones arrived at the gas station, he was arrested for two counts of child exploitation. Jones claimed that the government entrapped him into the crime, alleging he knew the whole time that he was not speaking with someone underage. The jury found Jones guilty of both counts of child exploitation. The court reporter certified the trial transcript as accurate, and Jones never sought to correct, modify, or supplement the transcript. The trial court denied Jones' motion for judgment notwithstanding the verdict or a new trial. Jones appealed.

ISSUES

Whether (1) the trial court erred by rejecting a jury instruction for entrapment; (2) the trial court erred by determining the verdicts were not against the overwhelming weight of the evidence; (3) Jones suffered a violation of his right not to incriminate himself; (4) the trial transcript was incomplete; and (5) Jones was deprived of effective counsel.

HOLDING

(1) Because Jones admitted knowing that the individual with whom he was conversing described himself to be fifteen years of age, and because there were several instances in which the individual told Jones he was speaking to a child, the trial court did not err by rejecting Jones' request for an entrapment jury instruction. (2) Because of the extensive evidence of messages from Jones to Amy, and because Jones actually showed up to the gas station, the trial court did not err in finding that the verdicts were not against the overwhelming weight of the evidence. (3) Because Jones was not forced into conceding that he never thought the person with whom he conversed was a minor, he did not suffer a violation of his right to not incriminate himself. (4) Because the court reporter certified the transcript as accurate, and because Jones never attempted to correct, modify, or supplement the transcript, Jones waived his right to assert that the transcript was incomplete. (5) Because the record is inadequate to address Jones' claim of ineffective assistance of counsel, this issue cannot be addressed by the court at this time. Therefore, the Court of Appeals affirmed the judgment of the Desoto County Circuit Court.

Affirmed - Docket 2022-KA-01117-COA (Mar. 19, 2024)

Opinion by Judge McCarty

Hon. Celeste Embrey Wilson (Desoto County Circuit Court)

Pro se for Appellant - Casey Bonner Farmer (Att'y Gen. Office) for Appellee

Briefed by [Allie Kellett](#)

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